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MATTHEW MCCLURE and the Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MATTHEW MCCLURE, on behalf
of himself and all others similarly
situated,

Plaintiff,

v.

AMERICAN HOME SHIELD
CORPORATION, a Delaware
corporation,

Defendant.

CASE NO. 2:22-cv-2163

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227
ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff Matthew McClure (“Plaintiff”) alleges as follows on knowledge as
2 to himself and his own acts/interactions, and on information and belief as to all
3 other matters:

4 **INTRODUCTION AND NATURE OF ACTION**

5 1. Plaintiff brings this action on his own behalf and on behalf of class of
6 similarly situated individuals for statutory damages, injunctive relief and any other
7 available legal or equitable remedies, resulting from the illegal actions of Defendant
8 American Home Shield Corporation in negligently, knowingly, and/or willfully
9 contacting Plaintiff on his cellular telephone with prerecorded messages without
10 prior express consent, continuing to contact his cellular telephone after expressly
11 requesting not to receive calls, in all in violation of the Telephone Consumer
12 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”).

13 **JURISDICTION & VENUE**

14 2. This Court possesses subject matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331 based on Plaintiff’s claims for violations of 47 U.S.C.
16 § 227 et seq.

17 3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the
18 defendant transacts business in this District and a substantial part of the events
19 giving rise to the above-captioned action occurred in this District.

20 **PARTIES**

21 4. Plaintiff, at all times relevant hereto, is and has been a resident of the
22 State of California.

23 5. Defendant American Home Shield Corporation (“Defendant”), at all
24 times relevant hereto, is and has been a Delaware corporation with its principal
25 place of business in Memphis, Tennessee. Defendant regularly directs, markets,
26 and provides its business activities throughout the State of California.

FACTUAL ALLEGATIONS

6. Upon information and belief, Defendant regularly makes calls with use of a prerecorded message and/or autodialed telephone calls to consumers in order to solicit business.

7. Plaintiff is, and has been at all times relevant to this action, the regular and sole user of his cellular telephone number.

8. Plaintiff was a customer of Defendant until the expiration of his coverage with Defendant, which was on or around February 2022.

9. Plaintiff is not aware of providing prior express consent to receive calls or voicemail messages from Defendant on his cellular phone, including prerecorded or artificial voice message calls.

10. Starting in or around January 2022, Defendant called Plaintiff on his cellular, sometimes numerous calls per day, with a prerecorded voice requesting him to renew his coverage with Defendant.

11. Plaintiff's cellular telephone number ending in 8705. Plaintiff is the subscriber and sole user of the 8705 number and is financially responsible for phone service to the number.

12. Defendant has been calling Plaintiff using the phone number (502) 715-4629 to call Plaintiff.

13. Defendant's prerecorded calls and voicemails to Plaintiff have the identical prerecorded voice message.

14. The calls also did not provide Plaintiff with the ability to get a live person on the phone to speak with them and request the calls to stop.

15. On or about February 2, 2022, Plaintiff called Defendant at 800-581-1515 and requested for the calls to stop and to be placed on Defendant's do-not-call list. Defendant told Plaintiff he would be placed on their do-not-call list and that a note was immediately placed in his file to indicate that Plaintiff was not to be

1 called. However, a few hours after this conversation with Defendant, Plaintiff
2 received another call from Defendant with the same prerecorded voice.

3 16. Given Defendant's complete disregard, that same day Plaintiff sent a
4 message to Defendant's Twitter account requesting the calls to stop. Plaintiff
5 provided the information and expressed his frustration with the voluminous calls
6 he was receiving and again requested the calls to stop. Defendant replied back
7 through its Twitter account requesting Plaintiff's property address or contact
8 number to better assist him.

9 17. Plaintiff sent Defendant another twitter message wherein he provided
10 the voicemail he had received an hour earlier from Defendant, with the same
11 prerecorded voice. Plaintiff again requested the calls to stop. Defendant replied
12 apologizing for the calls and assuring Plaintiff that the calls would stop.

13 18. However, a few hours later, Plaintiff received another call with a
14 prerecorded voice from Defendant with the same exact same message. Plaintiff
15 shared the voicemail again on Defendant's twitter correspondence, to which
16 Defendant replied that "over the next 3-5 business days, the calls will be fewer and
17 fewer, and by the 5th day the latest is when you should no longer receive anymore
18 sales calls." Plaintiff expressed how he was being harassed by the Defendant and
19 how it would continue even within that 3-5 day process time quoted by Defendant.

20 19. Defendant continued calling Plaintiff, including sometimes calling
21 back-to-back on the same day or calling multiple times per day with the same
22 prerecorded voice.

23 20. On March 9, 2022, Plaintiff again called Defendant requesting the
24 calls to stop. Again, Plaintiff was told by Defendant that the calls would stop.
25 However, Plaintiff continued receiving multiple calls daily from Defendant with a
26 prerecorded voice.

1 21. Despite Plaintiff's multiple requests to stop contacting him on his
2 cellular phone, including contacting Defendant using different outlets such as
3 Twitter, Defendant continued to call Plaintiff up to three times per day using the
4 exact same prerecorded voice message.

5 22. On approximately March 24, 2022, Plaintiff also received a text
6 message from the number 129, which stated "Please call 15027154629." This was
7 the same number used by Defendants in repeatedly calling Plaintiff with a
8 prerecorded voice. A call to this number confirmed that it was an automated voice
9 stating the number was that of Defendant.

10 23. The text message was generic in nature and, on information and
11 believe, were sent to thousands of people.

12 24. To date, Plaintiff has received approximately 47 calls from Defendant.

13 25. Upon information and belief, Defendant has a policy and regular
14 practice of placing calls, or knowingly sanctioning such calls, to consumers using a
15 prerecorded or artificial voice.

16 26. Defendant's calls were not for the purpose of an emergency.
17 Defendant's calls were unsolicited and not in response to an inquiry from Plaintiff.

18 27. Defendant's calls forced Plaintiff and other similarly situated class
19 members to live without the utility of their cellular phones by occupying their
20 cellular telephone with one or more unwanted calls, causing a nuisance and lost
21 time.

22 28. As a result thereof, Plaintiff has been damaged as set forth in the
23 Prayer for Relief herein.

24 29. Plaintiff seeks statutory damages and injunctive relief under 47 U.S.C
25 § 227(b)(3).
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CLASS ACTION ALLEGATIONS

30. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated.

31. Plaintiff brings this case on behalf of “**the Classes**” defined as follows:

No Consent Class: All persons within the United States who, within the four years prior to the filing of this Complaint, received any call to his or her cellular phone from or on behalf of Defendant through the use of a prerecorded or artificial voice without his or her prior express consent.

Revoked Consent Class: All persons within the United States who, within the four years prior to the filing of this Complaint, received any call to his or her cellular phone from or on behalf of Defendant through the use of a prerecorded or artificial voice after revoking his or her consent to receiving calls from Defendant.

Do-Not-Call Registry Class: All persons within the United States who, within the four years prior to the filing of this Complaint received any call to his or her cellular phone from or on behalf of Defendant through the use of a prerecorded or artificial voice where his or her telephone number had been listed on the National Do Not Call Registry for at least thirty days, for the purpose of encouraging the purchase of Defendant’s products or services.

No Consent Text Class: All persons within the United States who, within the four years prior to the filing of this Complaint, received any text to his or her cellular phone from or on behalf of Defendant through the use of an automatic telephone dialing system without his or her prior express consent.

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2 **Revoked Consent Text Class:** All persons within the United
3 States who, within the four years prior to the filing of this
4 Complaint, received any text to his or her cellular phone from or
5 on behalf of Defendant through the use of an automatic telephone
6 dialing system after revoking his or her consent to receiving calls
7 or texts from Defendant.

8 32. Defendants, their employees and other agents, the Judge to whom this
9 action is assigned and any members of the Judge's staff, and claims for personal
10 injury and/or emotional distress are excluded from the Classes. Plaintiff reserves
11 the right to expand the Class definitions to seek recovery on behalf of additional
12 persons as warranted as facts are learned in further investigation and discovery.

13 33. Plaintiff does not know the number of members in the defined Classes
14 but believes, based on popularity, number of customers, and the advertising of the
15 product/service, that the number is in the hundreds, if not substantially higher.
16 Thus, joinder of all the defined Class members is impractical due to the size and
17 relatively small value of each member's claim.

18 34. The members of the Classes share well defined, nearly identical,
19 questions of law and fact, which predominate over questions that may affect
20 individual members of the Classes. These common questions of law and fact
21 include:

22 a. Whether, within the four years prior to the filing of this Complaint,
23 received any call to his or her cellular phone from or on behalf of Defendant
24 through the use of a prerecorded or artificial voice after revoking his or her
25 consent to receiving calls from Defendant

26 b. Whether, within the four years prior to the filing of this Complaint,
27 received any call to his or her cellular phone from or on behalf of Defendant
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1 through the use of a prerecorded or artificial voice after revoking his or her
2 consent to receiving calls from Defendant.

3 c. Whether within the four years prior to the filing of this Complaint
4 received any call to his or her cellular phone from or on behalf of Defendant
5 through the use of a prerecorded or artificial voice where his or her
6 telephone number had been listed on the National Do Not Call Registry for
7 at least thirty days, for the purpose of encouraging the purchase of
8 Defendant's products or services.

9 d. Whether Defendant's conduct was a negligent violation of the TCPA.

10 e. Whether Defendant's conduct was knowing and/or willful violation of
11 the TCPA.

12 f. Whether Defendants should be enjoined from placing such texts in the
13 future.

14 g. Whether Defendant should be enjoined from placing such calls in the
15 future.

16 35. Members of the Classes are ascertainable and can be identified
17 through Defendant's records.

18 36. Plaintiff and members of the Classes are entitled to statutory damages
19 as provided for under the TCPA.

20 37. As persons that received calls from Defendants, without their prior
21 express consent, or revoking consent, or while being registered on the National
22 Do-Not-Call Registry, Plaintiff is asserting claims that are typical of the Classes.

23 38. Plaintiff will fairly and adequately represent and protect the interests
24 of the Classes in that Plaintiff has no interests antagonistic to any member of the
25 Classes.

26 39. Plaintiff and the members of the Classes have all suffered harm as a
27 result of Defendant's unlawful and wrongful conduct. Because of the size of the
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individual class member's claims, few, if any, class members could afford to seek legal redress for the wrongs complained of herein.

40. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the TCPA.

41. A class action is a superior method for the fair and efficient adjudication of this controversy.

42. Defendant has acted on grounds generally applicable to the Classes and evidence of Defendant's TCPA violations can be determined on a class-wide basis.

FIRST CLAIM

NEGLIGENT VIOLATIONS OF THE TCPA

(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)

43. Plaintiff incorporates by reference all preceding paragraphs.

44. The forgoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

45. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and each of the members of the Classes are entitled to statutory damages of \$500 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

46. Plaintiff and the members of the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CLAIM

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA

(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)

47. Plaintiff incorporates by reference all preceding paragraphs.

1 subscribers' privacy rights to avoid receiving telephone solicitations to which they
2 object. 47 U.S.C. § 227(c).

3 55. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to
4 be initiated, telephone solicitations to telephone subscribers such as Plaintiff and
5 the Do-Not-Call Registry Class members who registered their respective telephone
6 numbers on the National Do-Not-Call Registry, a listing of persons who do not
7 wish to receive telephone solicitations that is maintained by the federal
8 government.

9 56. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the
10 Do-Not-Call Registry Class received more than one telephone call in a 12-month
11 period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as
12 described above. As a result of Defendant's conduct as alleged herein, Plaintiff and
13 the Do-Not-Call Registry Class suffered actual damages and, under section 47
14 U.S.C. § 227(c), are entitled, inter alia, to receive up to \$500 in damages for such
15 violations of 47 C.F.R. § 64.1200.

16 57. To the extent Defendant's misconduct is determined to be willful and
17 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
18 statutory damages recoverable by the members of the Do Not Call Registry Class.

19 **JURY TRIAL DEMANDED**

20 58. Plaintiff demands a jury as to all claims.

21 **PRAYER FOR RELIEF**

22 59. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff
23 and the members of the Classes the following relief against Defendant:

- 24 a. An Order, pursuant to Federal Rule of Civil Procedure 23(c) and (g),
25 certifying the proposed Classes and appointing Plaintiff's undersigned
26 counsel of record to represent the Classes.

b. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Classes \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

c. As a result of Defendant's willful and/or knowing violation of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Classes treble damages, as provided by statute, up to \$1,500 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

d. Plaintiff and the members of the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

e. An award of attorneys' fees and costs to counsel.

f. Such other relief as the Court deems just and proper.

Dated: April 1, 2022

Respectfully submitted,

AZADIAN LAW GROUP, PC

By: /s/ George S. Azadian

George S. Azadian

Attorneys for Plaintiff MATTHEW MCCLURE
and the Proposed Class